

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application

Inventor: Aki Korhonen

Appln. No.: 09/800,764

US Patent No.: 7,139,954

Confirm. No.: 3899

Filed: March 6, 2001

Title: METHOD AND APPARATUS FOR TESTING  
A COMPUTING DEVICE WITH MEMORY USING TEST  
PROGRAM CODE

PATENT

Art Unit: 2138

Examiner: James C. Kerveros

Customer No. 23910

**DUTY OF DISCLOSURE UNDER 37 C.F.R. § 1.765**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

After a review of the above mentioned patent, an apparent error in calculation of the Patent Term Adjustment (PTA) for this patent has been noted. In particular, the Determination of Patent Term Adjustment indicates a determination of 1157 days. Applicant respectfully requests that the UPSTO review this determination for accuracy.

Applicant believes he is entitled to an extension of 451 days. Applicant believes that the PAIR system determination on April 5, 2006, of a 551-day USPTO delay for issuance of the second office action should instead be 136 days. Applicant also believes that there should be a determination of a 171-day applicant delay for the November 19, 2004, filed Petition to Revive an Unintentionally Abandoned Application with a Response to the Office Action dated March 1, 2004. Additionally, there should be a 120-day delay from the filing of the Petition to Revive an Unintentionally Abandoned Application until four months from the mailing of a grantable petition.

## Statement of Facts

In the following facts are set forth below:

- (1) The correct patent term adjustment is 451 days.
- (2) On March 1, 2004, the Examiner mailed a Non-Final Rejection.
- (3) On November 19, 2004, applicant filed a Petition to Revive an Unintentionally Abandoned Application with a Response to the Office Action dated March 1, 2004.
- (4) On April 5, 2006, the Examiner mailed a Non-Final Rejection.
- (5) The PAIR system indicates a determination of 551 day delay by the USPTO on April 5, 2006, regarding the Non-Final Rejection mailed April 5, 2006.
- (6) It appears the USPTO is treating the response filed on November 19, 2004, as a timely filed response for patent term adjustment purposes, however, as Applicant filed the response on November 19, 2004, 171 days after the three month response due date of June 1, 2004, there should be a 171 day delay for the response on Applicant's part under 37 CFR 1.704(b).
- (7) It also appears that the USPTO is not counting for the 120 day delay on the part of the applicant, counting from the November 19, 2004 filing of the Petition to Revive an Unintentionally Abandoned Application until the mailing of Decision on the Petition mailed July 20, 2005, or four months from the filing of a grantable petition under 37 CFR 1.704(3) (ii).
- (8) It also appears the USPTO is treating the Non-Final Rejection mailed April 5, 2006 as a delay by the USPTO from the three month response due date of June 4, 2004, Non-Final Rejection, until the April 5, 2006 mailing date the Non-Final Rejection mailed April 5, 2006 by the USPTO.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Date: April 9, 2008 By: /Joseph P. O'Malley/  
Joseph P. O'Malley  
Reg. No. 36,226

FLIESLER MEYER LLP  
650 California Street, 14<sup>th</sup> Floor  
San Francisco, CA 94108  
Telephone: (415) 362-3800  
Fax: (415) 362-2928  
Customer No.: 23910